

STATE OF MICHIGAN
COURT OF APPEALS

WALTER MALCZEWSKYI,

Plaintiff-Appellant,

v

STATE OF MICHIGAN and BUREAU
OF LOTTERY,

Defendants-Appellees.

UNPUBLISHED

July 15, 1997

No. 192186

Court of Claims

LC No. 95-015913-CM

Before: Neff, P.J., and Wahls and Taylor, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants summary disposition pursuant to MCR 2.116(C)(8) and (10), and dismissing plaintiff's proposed class action lawsuit for breach of contract. This case arose out of defendants' refusal to pay plaintiff prize winnings in the "\$5,000 Money Match" instant lottery game. Plaintiff believed he had won a \$5,000 prize under his interpretation of the game rules. We affirm.

Plaintiff first argues that the trial court erred when it ruled that the lottery ticket was not ambiguous on its face. We disagree. The directions printed on the front of the game ticket provide that "if 'your prize' matches 'their prize' in any game, win that prize amount." Plaintiff argued that the phrase "in any game" is a misplaced modifier that allowed the rules to be interpreted to mean that if any dollar amount in the "your prize" column matched any dollar amount in the "their prize" column, then the holder was a winner even though the matching icons were not necessarily found in the same horizontal game row. On the back of the lottery ticket, however, it states that "all tickets, transactions and winners are subject to lottery rules, directives and state law and any prospective and uniform changes thereof." Lottery Bureau Instant Game Directive No. 212 explains that "game" means horizontal row. The rules adopted by the state with regard to awarding prizes under Michigan's lottery act, MCL 432.1 *et seq.*; MSA 18.969(1) *et seq.*, are promulgated pursuant to the administrative procedures act, MCL 24.201 *et seq.*; MSA 3.560(101) *et seq.*, and are binding on those who choose to participate in the lottery under principles of contract law. MCL 432.11; MSA 18.969(11); *Coleman v Bureau of State Lottery*, 77 Mich App 349, 351; 258 NW2d 84 (1977); *Paulsen v Bureau of State Lottery*, 167

Mich App 328, 333-334; 421 NW2d 678 (1988). In purchasing a ticket, the purchaser accepts the bureau's "public offer that the purchaser of a lottery ticket would have a chance of winning a prize according to the advertised rules and procedures of the lottery," and, in doing so, the purchaser agrees "to the announced rules for determining prize winners." *Coleman, supra* at 351. Since the announced rules on plaintiff's ticket referenced lottery directives, the trial court properly concluded that Directive No. 212 was a term of the contract.

Plaintiff's interpretation of the game rules can stand only when the ticket directions are considered in a vacuum. In determining that the lottery ticket was not ambiguous, the trial court properly considered the ticket's reference to four chances to win, Directive No. 212, and the physical layout of the ticket, i.e., the existence of four solid horizontal lines across the prize columns. The horizontal lines and the numbering of the games communicate the fact that the ticket contains four games, each separated by a solid, horizontal line. To hold that the lottery ticket was ambiguous on its face by considering only the phraseology relied on by plaintiff would ignore the physical layout of the ticket. It would also violate the general principle that requires trial courts to construe contracts as a whole, giving "harmonious effect, if possible, to each word and phrase." *Singer v Goff*, 334 Mich 163, 168; 54 NW2d 290 (1952).

Plaintiff also argues that the trial court erred when it found that no genuine issue of material fact existed, claiming that he met his burden under MCR 2.116(C)(10) as non-moving party to show that a genuine issue of material fact existed by submitting evidentiary material. *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991). At the initial hearing, plaintiff provided only his own affidavit as evidence of the existence of a genuine issue of material fact. He claimed that he was induced to purchase a ticket upon a reading of the rules on the face of the ticket. Defendants did not dispute any of the factual allegations contained in plaintiff's affidavit. Later, in support of a motion for reconsideration, plaintiff provided the trial court with a report of an expert witness, who stated that the ticket directions contain a grammatical error.

In support of his claim on appeal that his affidavit and expert's opinion raise a question of fact rather than a question of law, plaintiff cites *SSC Assocs Ltd Partnership v Gen Retirement Sys of Detroit*, 192 Mich App 360; 480 NW2d 275 (1991). There, this Court held that where the meaning of a phrase in a contract was disputed, that alone was sufficient to raise a genuine issue of material fact regarding the parties' intent. *Id.* at 366. Plaintiff's reliance is misplaced. The dispute in *SSC* involved the meaning of a phrase found in a private contract drafted by the parties. *Id.* at 362. This was not a private contract and plaintiff did not participate in drafting the contract so there can be no question of the parties having differing intent at the time the contract was written as was the case in *SSC*. The terms of this contract were set by law pursuant to the lottery act and the administrative procedures act. MCL 432.11; MSA 18.969(911); MCL 24.201 *et seq.*; MSA 3.5600(101) *et seq.* Also, the plain meaning of the disputed phrase is not ambiguous when the contract is construed as a whole, i.e., when the ticket and the game directive are read together. In deciding a motion for summary disposition in a breach of contract action, a court may interpret the contract if its terms are clear. *SSC, supra* at 363. Whether plaintiff was a prize winner under this contract is a question of law and not a question of fact.

Plaintiff next argues that the trial court erred in ruling that he failed to state a claim on which relief could be granted pursuant to MCR 2.116(C)(8). We disagree. A defendant is not entitled to summary disposition if the plaintiff's complaint contains well-pleaded allegations which, if proved, state a claim on which relief could be granted, i.e., the claim is not so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992); *Hansman v Imlay City State Bank*, 121 Mich App 424, 427; 328 NW2d 653 (1982). Plaintiff sought relief under a breach of contract theory. On its face, the complaint contained all the elements of breach of contract and an adequate prayer for relief. However, while a trial court must accept a complaint's factual allegations as true and may not look to evidence beyond the complaint itself, the trial court may not ignore the law in determining the legal sufficiency of a claim. In this case, Instant Game Directive No. 212 carried the force of law and was properly considered. That directive established that defendants owed plaintiff no duty to pay the prize money under the contract as a matter of law. Accordingly, plaintiff failed to state a claim on which relief could be granted.

Affirmed.

/s/ Janet T. Neff
/s/ Myron H. Wahls
/s/ Clifford W. Taylor